

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEVIN MILLEN,

Plaintiff,

v.

WISCONSIN STATE JOURNAL,

Defendant.

ORDER

09-cv-512-slc

Plaintiff Kevin Millen has filed a notice of appeal from the judgment entered herein on November 3, 2009, dismissing his case for failure to state a claim upon which relief may be granted. Now before the court is plaintiff's notice of appeal. Because plaintiff has not paid the \$455 fee for filing a notice of appeal, I construe the notice as including a request for leave to proceed in forma pauperis on appeal.

Plaintiff's request for leave to proceed in forma pauperis on appeal will be denied, because I am certifying that his appeal is not taken in good faith. In Lucien v. Roegner, 682 F.2d 625, 626 (7th Cir. 1982), the court of appeals instructed district courts to find bad faith where a plaintiff is appealing the same claims the court found to be without legal merit in denying plaintiff leave to proceed on his complaint. Lee v. Clinton, 209 F.3d 1025, 1027

(7th Cir. 2000). Plaintiff is trying to appeal the same claims I have found to lack legal merit. Because there is no legally meritorious basis for plaintiff's appeal, I must certify that the appeal is not taken in good faith.

Because I am certifying plaintiff's appeal as not having been taken in good faith, plaintiff cannot proceed with his appeal without prepaying the \$455 filing fee unless the court of appeals gives him permission to do so. Under Fed. R. App. P. 24, plaintiff has 30 days from the date of this order in which to ask the court of appeals to review this court's denial of leave to proceed in forma pauperis on appeal. With his motion for review, he should send along an affidavit as described in the first paragraph of Fed. R. App. P. 24(a), including a statement of issues that plaintiff intends to present on appeal. He must also send the court of appeals a copy of this order. Plaintiff should be aware that he should file these documents in addition to the notice of appeal he has previously filed. If plaintiff does not file a motion asking for review of this order, the court of appeals may not address this court's denial of leave to proceed in forma pauperis on appeal. Instead, it will require plaintiff to pay the entire \$455 filing fee before it considers his appeal. If plaintiff does not pay the fee within the deadline set, it is possible that the court of appeals will dismiss the appeal.

ORDER

IT IS ORDERED that plaintiff's request for leave to proceed in forma pauperis on

appeal, dkt. #13, is DENIED. I certify that plaintiff's appeal is not taken in good faith. The clerk of court is directed to make sure that plaintiff's obligation to pay the \$455 fee for filing his appeal is reflected in the court's financial record.

Entered this 23rd day of November, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge